

## REMARKS

### Priority

The Examiner has noted that the application filed under former 37 C.F.R. § 1.60 lacks the necessary reference to the prior application. The application has been amended with the language required by the Examiner.

### Drawings

The Examiner has indicated that the drawings are objected to because the thin strip element between the spacers and the gate electrode and the layer formed on the gate electrode are not labeled in Figures 2-6. Applicant notes that these elements form part of the spacers 26A and 26B. The Examiner will appreciate that there are many different manners of making spacers. The specific manner of making the spacers 26A and 26B, including the thin strip element and the layer referred to by the Examiner, is not an important feature of the present invention. As such, Applicant does not deem it necessary to label the four components of each shaper 26A and 26B. Applicant, accordingly, respectfully requests withdrawal of the objection to the drawings.

### 35 U.S.C. § 112 Rejections

The Examiner has rejected claims 38-39 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has amended these claims to overcome these rejections, and respectfully requests withdrawal of the rejections of these claims under 35 U.S.C. § 112, second paragraph.

### Double Patenting

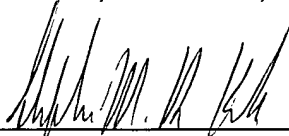
The Examiner has rejected claims 28-39 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,621,131. Applicant submits herewith a Terminal Disclaimer to overcome the rejection. Applicant, respectfully requests withdrawal of the rejections of claims 28-39 under the judicially created doctrine of obviousness-type double patenting.

Applicant respectfully submits that the present application is in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Stephen M. De Klerk at (408) 720-8300.

Please charge any shortages and credit any overages to Deposit Account No. 02-2666. Any necessary extension of time for response not already requested is hereby requested. Please charge any corresponding fee to Deposit Account No. 02-2666.

Respectfully submitted,

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